

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION**

**COMPLAINT AGAINST:**

**Referee David G. Myers**  
Sanilac County Friend of the Court  
60 W. Sanilac Road  
PO Box 187  
Sandusky, MI 48471

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**Formal Complaint No. 86**

**ORDER SETTING HEARING DATE BEFORE COMMISSION**

At a session of the Commission,  
held in the City of Detroit,  
Michigan on July 12, 2010

PRESENT:      Hon. Kathleen J. McCann, Chairperson  
Thomas J. Ryan, Vice Chairperson  
Hon. Nanci J. Grant, Secretary  
Nancy J. Diehl, Esq.  
Richard Long  
Hon. Eugene A. Moore  
Hon. David H. Sawyer  
Hon. Jeanne Stempien  
Marja M. Winters

The Michigan Judicial Tenure Commission having issued a formal complaint as authorized under Article 6, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 et seq.; Respondent having filed a timely Answer to the formal complaint and admitting the factual allegations against him in each and every paragraph; the Commission determining that the Respondent's admissions relieve the Examiner of

the duty to present evidence in support of the charges<sup>1</sup>, as set forth in MCR 9.211(A); and the Commission further determining that the proofs are now closed in this matter;

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Examiner shall withdraw the Petition for Appointment of a Master, still pending before the Supreme Court.

**IT IS FURTHER ORDERED** that this matter be set for a hearing before the Commission on September 13, 2010 at 10:00 a.m. at a courtroom of the Michigan Court of Appeals; 3020 W. Grand Blvd., Cadillac Place Building, Detroit, MI 48202.

**IT IS FURTHER ORDERED** that the parties may present closing argument regarding the facts and recommendation as to possible sanction, each side to have no more than 30 minutes.

**IT IS FURTHER ORDERED** that each party shall file a brief, not to exceed 25-pages, on the issue of sanction on or before August 20, 2010. Each party may file a response brief on or before August 27, 2010.

**IT IS FURTHER ORDERED** that neither the Examiner nor the Respondent may present evidence to support or refute the factual allegations of paragraphs 1-18 of the

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<sup>1</sup> “We find it axiomatic that, where the defendant in its answer has admitted to facts alleged by the plaintiff in the complaint, the plaintiff is relieved of the burden of proving those facts at trial.” *Hunt v CHAD Enterprises*, 183 Mich App 59, 63 (1990). Furthermore,

[F]ormal concessions *in the pleadings in the case* or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.

\* \* \*

The party who makes such an admission “has conclusively (or ‘judicially’) admitted such facts ... and the opposing side need not introduce evidence to prove the facts. (Emphasis added; citations and footnote omitted.)

*Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420 (1996) (dealing with requests for admissions).

formal complaint. The parties may, if they so choose, argue the applicability of paragraphs a-g which follow paragraph 18 in the formal complaint.

**IT IS FURTHER ORDERED** that no other evidence may be offered at the September 13<sup>th</sup> hearing unless the Commission so orders. A party wishing to produce any further evidence must file a written motion on or before July 23, 2010. Any party may file an answer to a motion to produce further evidence on or before July 30, 2010.

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/s/

Hon. Kathleen J. McCann  
Chairperson  
Judicial Tenure Commission

DATED: July 16, 2010